

July 2, 1999

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**
850 Union Bank of California Building
900 Fourth Avenue
Seattle, Washington 98164
Telephone (206) 296-4660
Facsimile (206) 296-1654

REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E9801031**

MIRRORMONT COUNTRY CLUB
Code Enforcement Appeal

Location: 25500 Southeast Mirrormont Drive (154th Street)

Property Owner
and Appellant: Mirrormont Country Club members, *represented by*
Tom Armstrong
P. O. Box 1758
Issaquah, WA 98027

SUMMARY OF RECOMMENDATIONS AND DECISION:

Department's Preliminary Recommendation:	Deny the appeal
Department's Final Recommendation:	Deny the appeal
Examiner's Decision:	Deny the appeal

PRELIMINARY MATTERS:

Notice of appeal received by Examiner:	April 23, 1999
Statement of appeal received by Examiner:	April 23, 1999
Pre-Hearing Conference	May 24, 1999

EXAMINER PROCEEDINGS:

Hearing Opened:	June 24, 1999
Hearing Closed:	June 25, 1999

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.

A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

ISSUES/TOPICS ADDRESSED:

- Trees
- Clearing and grading

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. **Notice and Order Served.** On November 6, 1998, the Code Enforcement Section of the King County Department of Development and Environmental Services (the “Department” or “DDES”) served upon Mirrormont Country Club (the “Appellant”) a notice of King County code violation; civil penalty order; abatement order; and notice of lien. That notice and order cited the Appellant for the following:

Clearing within an area subject to clearing restrictions contained in a critical drainage area, administrative rule, or in P-suffix conditions in an adopted community plan, without a valid clearing permit.

That same notice and order required the Appellant to submit and obtain a valid grading and clearing permit, to be viewed, approved and implemented within 60 days from the date of notice. The notice and order contained other directives deemed by the Department to be necessary to bring the property into compliance: investigation fee payment; Issaquah School District 411 permission to remove trees from its property; roadway ditch cleanup; and, broken culvert replacement.

2. **Appeal Filed.** On November 25, 1998, Mirrormont Country Club filed its Notice of Appeal. The Appellant argues that DDES misinterpreted and misapplied the relevant sections of KCC 16.82.060 and 16.82.150.C. In support of its position, the Appellant argues that it was conducting “landscaping activity” in accordance with 16.82.050.17 (a) and (c).
3. **Relevant Facts.** The following facts are relevant to this review:
 - a. The chronology of events contained in the Department’s Preliminary Report to the Hearing Examiner (Exhibit No. 1) is accurate and therefore adopted and incorporated here by this reference.
 - b. Several large trees, Red Cedar and Douglas Fir, were felled and removed from the Mirrormont Country Club property. No permits were obtained. The debate in this review, of course, centers to considerable extent upon *whether* any Departmental permission was required. The tree cutting occurred on or before October 5, 1998.

- c. The trees at issue were located in three areas.
- One, on Issaquah School District property behind (north from and abutting) the Mirrormont Country Club property.
 - Four trees within an area described by the Appellant (Exhibit No. 25N) as “existing coniferous forest area” along the east boundary of the subject property abutting Southeast Mirrormont Place.
 - Several additional trees within a similarly forested or wooded area along the south boundary of the subject property abutting Southeast Mirrormont Drive.

The areas from which the trees were removed are called “native” or “native growth” areas by the Department. Additional trees were removed from other portions of the Mirrormont Country Club property. However, the Department has chosen not to cite the Appellant for removal of those trees.

- d. Departmental testimony from an arborist and a forester and the photographs in Exhibit No. 24 (particularly the first page) indicate that the cut and removed trees were merchantable timber. The Appellant received no recompense for the trees, however. The Appellant testifies that the trees were not “cut up for firewood” and were therefore removed from the property intact as logs (shown on the first page of Exhibit No. 24).
- e. The Appellant argues that the hazard of vandalism has been successfully stopped by removal of the trees at issue. The removal of these trees has increased visibility of the clubhouse from Southeast Mirrormont Place and Southeast Mirrormont Drive. It is difficult to square this argument with the tree removed from neighboring Issaquah School District property. However, that violation has been resolved and therefore will not be pursued further here.
- f. The Mirrormont Country Club, through the years, has “maintained” the native growth areas on the subject property by having cleanup parties, pruning some shrubs, vine maple and so on. The Appellant argues that these actions make the native growth area an exempt “landscaped” area.
- g. The subject property is located within the Issaquah Creek drainage basin, designated a critical basin by Ordinance 11886, July 21, 1995.
4. Any portion of the above findings which may be construed as a conclusion is hereby adopted as such.

CONCLUSIONS:

1. As defined by KCC 16.82.020, *clearing* means the cutting or removal of vegetation or other organic plant material by physical, mechanical, chemical or any other means. The Appellant is cited for *clearing* without a permit. KCC 16.82.050.A requires that “no person shall do any clearing...without first having obtained a clearing...permit...”

Many—in fact, nineteen—exceptions to this requirement are provided. The exceptions at issue in this review are established by KCC 16.82.050.A.17.a and c:

- Normal and routine maintenance of existing lawns and landscaping subject to...limitations on the use of pesticides in sensitive areas...;
- Emergency tree removal to prevent imminent danger or hazards to persons or property.

Regarding “normal and routine maintenance”, the Appellant argues that periodic pruning of vine maple and similar shrubs within the areas described by the Department as *native* or *native growth* has rendered them no longer native, but rather “landscaped.” The Department responds that this distinction is not relevant because the KCC 16.82 clearing regulations apply to the areas at issue *regardless* of whether the area is “native” or not. See Conclusion 2, following.

Regarding “emergency tree removal”, the Appellant argues that a law enforcement officer recommended the tree removal to reduce vandalism and that, in fact, the measure has successfully reduced or eliminated vandalism due to increased visibility of the clubhouse area. This novel argument strains the concept of emergency tree removal beyond any previously heard in this jurisdiction. A review of the purposes of the King County grading and clearing regulations, established by KCC 16.82.010, clearly shows that these regulations do not address vandalism. The “imminent danger or hazard to persons or property” which qualifies a tree for KCC 16.82.050.A.17.c authorized emergency removal vests of course in the tree itself. The tree must be a danger or hazard. There are many other reasons for cutting trees: view enhancement, visibility (including vandalism reduction or parking lot safety), or ordinary personal preference. None of these reasons qualify for exception pursuant to KCC 16.82.050.17.c. This hearing record lacks any evidence that any of the removed trees in and of themselves were a danger or hazard to any person or property.

2. KCC 16.82.150 establishes clearing standards. KCC 16.82.150. A.3 applies the “critical drainage area designations identified by adopted administrative rule.” In addition, and more to the point, KCC 16.82.150.C regulates clearing for the RA (Rural Area) zoned areas, and within, *inter alia*, the Issaquah Creek basin. Within these designated basins all vegetation is protected. It makes no difference whether the area at issue is *native* or *not native*. If the vegetation of concern lies within a critical drainage basin or within the Issaquah Creek basin, *clearing* (see definition above) requires a clearing permit.

The Appellant argues that the Department has confused the difference between “normal and routine maintenance” and “landscaping” on one hand with “clearing” on the other. However, the definition of clearing contained in KCC 16.82.020 leaves no room for confusion.

Cutting is the severing of the main trunk or stems from close to or at the soil surface or at a point up to 25% of the total vegetation height (KCC 16.82.020.G). When *cutting* has occurred on vegetation, *clearing* has occurred (KCC 16.82.020.E). If this cutting and clearing of vegetation occurs in the Issaquah Creek basin it is regulated by KCC 16.82.150.C which provides no exception for either native or non-native areas. Due to the onerousness and unreasonableness of such a regulation as it would affect both the regulator and the regulated alike, the Department has chosen not to enforce the Issaquah drainage basin prohibition on clearing within any areas that are not native.

By focusing on native areas or native growth areas, the Department makes the regulation, albeit by administrative fiat, more reasonable on property owners and less onerous to the Department. In this very case, for instance, the removal of trees within those portions of the Mirrormont Country Club property not called native or native growth by the Department were not cited. The Appellant’s arguments, in essence, would extend that tolerance to apply to the areas at issue even though they were never altered from their native state other than for minor pruning of some understory. See Exhibits 25E through 25K.

3. The County photographs in evidence clearly support the Department position that the cleared trees were removed from a native area. This conclusion is supported also by the expert testimony of record (Douglas, arborist; Ballweber, forester). Cutting back a vine maple or other isolated understory species does not suddenly transform a native area into a non-native area nor (as the Appellant would say) “landscaped” area. The preponderance of evidence in this regard supports the Decision that follows.
5. The Department has not rebutted the Appellant’s contention that the affected ditch(es) have been properly cleaned. The evidence of record supports the Appellant on this issue. See particularly the photograph entered as Exhibit No. 25L. Therefore, the Order below contains no reference to ditch cleaning.

DECISION:

- A. Acknowledging the Department’s withdrawal of that portion of the November 6, 1998 Notice and Order that applies to the tree removed from Issaquah School District property, that portion of this matter is DISMISSED.
- B. Regarding the remainder of the Department’s November 6, 1998 Notice and Order, the appeal is DENIED.

ORDER:

- A. Appellant Mirrormont Country Club shall submit an application for a valid clearing/grading permit, including a site restoration plan consistent with the requirements for native vegetation coverage within the Issaquah Creek basin **no later than 4:00 p.m., August 2, 1999**. Compliance with this Order requires full payment of all fees then due.

The site restoration plan shall include, but shall not be limited to, roadway ditch cleaning to pre-logging status and broken culvert replacement (consistent with King County Road Standards and in compliance with any required permits for that activity).

- B. Appellant Mirromont Country Club shall implement the clearing/grading permit conditions of approval and the site restoration plan as approved by the Department **within 45 days following** Departmental approval of same.
- C. Appellant Mirrormont Country Club shall pay a clearing investigation fee as provided by KCC 27.02.070, the amount to be determined in conjunction with review of the plans or permit identified above by such reasonable deadline as may be set by the Department.
- D. Any civil penalties that may have accrued to this date are hereby waived.
- E. Failure to comply with the Department's November 6, 1998 Notice and Order as affirmed by this Order, within the compliance schedule provided by this Order, shall result in a cumulative penalty in the amount of \$100 per day per each violation plus billable costs of the Department of Development and Environmental Services, to be incurred until the violations are corrected in compliance with this Order. In the event compliance has not been accomplished within 60 days following the deadline set by this Order, the Department shall abate the above violations by causing the correction work to be done. The cost of the abatement work shall be charged as an obligation of the Mirrormont Country Club and as a lien against the property.
- F. This Order shall not be construed as limiting the authority of the Department or the King County Prosecutor to pursue any other civil or criminal enforcement.

ORDERED this 2nd day of July, 1999.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 2nd day of July, 1999, to the parties and interested persons shown below:

Tom Armstrong
Mirrormont Country Club
P.O. Box 1758
Issaquah, WA 98027

Mark Spenny
25401 SE Mirrormont Dr.
Issaquah, WA 98027

Jim Ballweber
DDES/LUSD
MS 1B Renton

Elizabeth Deraitus
DDES/LUSD
MS 1B Renton

Dan Douglas
DDES/LUSD
MS 1B Renton

Randy Sandin
DDES/LUSD
MS 1B Renton

Fred White
DDES/LUSD
MS 1B Renton

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless within twenty (20) days from the date of the decision an aggrieved party or person applies for a writ of certiorari from the Superior Court in and for the County of King, State of Washington, for the purpose of review of the decision.

MINUTES OF THE JUNE 24 AND JUNE 25, 1999 PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E9801031-MIRRORMONT COUNTRY CLUB:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing and representing the Department were Fred White, Dan Douglas and James Ballweber. Participating in this hearing and representing the Appellant were Tom Armstrong and Mark Spenny.

The following exhibits were offered and entered into the record:

June 24, 1999:

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|----------------|-------------------------------------------------------------------------------------------------------------------------------------|
| Exhibit No. 1 | Department of Development and Environmental Services, Code Enforcement Section Report to the Examiner, dated Jun 24, 1999 |
| Exhibit No. 2 | Map of Mirrormont, Division 4, S23-TWP-23N-R6E.W.M. |
| Exhibit No. 3 | King County Grading Codes, Chapter 16.82 |
| Exhibit No. 4 | Stop Work Order, dated October 9, 1998 |
| Exhibit No. 5 | Letter to Tim Cheatum from Mark Spenny, dated October 14, 1998, with two attachments |
| Exhibit No. 6 | Letter to Mary Fredrickson from Tim Cheatum, dated October 16, 1998 |
| Exhibit No. 7 | Hand written letter to Randy Sandin from MarkSpenny, dated October 19, 1998, with two attachments |
| Exhibit No. 8 | Hand written letter to Randy Sandin from Mark Spenny, dated October 20, 1998 |
| Exhibit No. 9 | Letter to Mary Fredrickson from Dan Douglas, dated November 2, 1998 |
| Exhibit No. 10 | Notice of King County Code Violation; Civil Penalty Order; Abatement Order; Notice of Lien; Duty to Notify, dated November 6, 1998. |
| Exhibit No. 11 | Letter of Notice of Violation, to Doug Snyder from Dan Douglas, with three attachments. |

- Exhibit No. 12 Appeal letter of King County code violation, from Mirrormont Country Club representative Tom Armstrong to DDES, dated November 20, 1998.
- Exhibit No. 13 Notice of Appeal, dated November 24, 1998
- Exhibit No. 14 Letter to Mirrormont Country Club Board of Directors from Dan Douglas, dated December 8, 1998.
- Exhibit No. 15 Letter to Dan Douglas from Mirrormont Country Club Board of Directors, dated January 11, 1999 with three attachments
- Exhibit No. 16 Letter to Dan Douglas from Tom Armstrong, dated March 4, 1999
- Exhibit No. 17 Letter to Mirrormont Country Club Board of Directors from Dan Douglas, dated March 16, 1999
- Exhibit No. 18 Notice of Hearing, dated May 4, 1999
- Exhibit No. 19 Corrected Notice of Hearing, dated May 7, 1999
- Exhibit No. 20 Copy of Permit Center Message Form noting contact from Tom Armstrong, message, and Department's response, dated May 11 and May 12, 1999
- Exhibit No. 21 Omitted
- Exhibit No. 22 Omitted
- Exhibit No. 23 Letter to R. S. Titus, King County Deputy Hearing Examiner, from Tom Armstrong, dated June 2, 1999
- Exhibit No. 24 Photographs of Mirrormont property with index list (4 pages total)
- Exhibit No. 25A Mirrormont Country Club exhibit list, dated June 10, 1999
- Exhibit No. 25B Letter to Dan Douglas from Mirrormont Country Club Board of Directors, with three attachments, dated January 11, 1999 (see Exhibit No. 15)
- Exhibit No. 25C Letter to Mary Fredrickson from Dan Douglas, highlighted and dated November 2, 1998 (see Exhibit No. 9).
- Exhibit No. 25D Letter to Mirrormont Country Club Board of Directors from Dan Douglas, highlighted and dated March 16 1999 (see Exhibit No. 17).
- Exhibit No. 25E Photograph of stump, dated November 10, 1998
- Exhibit No. 25F Photograph of vine maple, dated November 10, 1998
- Exhibit No. 25G Photograph of shrub base, dated November 10, 1998
- Exhibit No. 25H Photograph of mountain ash, dated November 10, 1998
- Exhibit No. 25I Photograph of holly tree, dated November 10, 1998
- Exhibit No. 25J Photograph of "cleared" area (southeast view), dated November 10, 1998
- Exhibit No. 25K Photograph of "cleared" area (west view), dated November 10, 1998
- Exhibit No. 25L Photograph of ditch, dated November 10, 1998
- Exhibit No. 25M Photograph of broken culvert, dated November 10, 1998
- Exhibit No. 25N Hand drawn map of Mirrormont Long Range Plan, Landscaping and Site Improvement, dated April 1998
- Exhibit No. 25O Hand written notes (1 page) from December 16, 1998 meeting with DDES employees and Mirrormont Board of Directors
- Exhibit No. 25P Hand written notes (1 page) from December 16, 1998 meeting with DDES employees and Mirrormont Board of Directors
- Exhibit No. 25Q Hand written notes (2 pages, stapled) from December 16, 1998 meeting with DDES employees and Mirrormont Board of Directors.
- Exhibit No. 25R Copy of King County Technical Terms and Land Use Conditions 21A.06.005-21A.06.795.
- Exhibit No. 25S Copy of King County Development Standards for Landscaping and Water Use 21A.16.010-21A.16.370.
- Exhibit No. 26 Mirrormont Country Club Presentation on E9801031, dated June 24, 1999
- Exhibit No. 27 Statement of Mark Spenny, titled "My Experience with Dan Douglas and other King County Employees", dated May 23, 1999

June 25, 1999:

- Exhibit No. 28 Letter from Mrs. W. A. Sibley dated June 21, 1999
- Exhibit No. 29 Letter from Thomas A. Harrington, dated June 21, 1999
- Exhibit No. 30 Letter from Mirrormont Country Club members, dated June 22, 1999
- Exhibit No. 31 Summary of Events related to stop work order, authored by Mary E. Fredrickson, dated October, 1998.
- Exhibit No. 32 Statement of Tom Armstrong, dated May 23, 1999

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